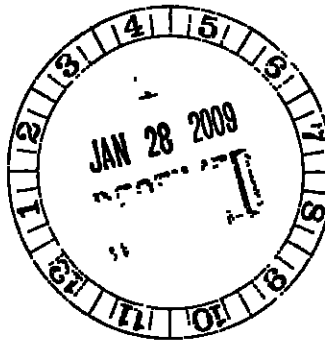


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January 29, 2009

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BY HAND

The Honorable Anne K. Quinlan, Esq
Acting Secretary
Surface Transportation Board
395 L Street, SW
Washington, D.C. 20423-0001

224425

Re STB Docket No. AB-290 (Sub-No. 210X)
Norfolk Southern Railway Company
Abandonment – in Atlanta, Fulton County, Georgia

ENTERED
Office of Proceedings

JAN 28 2009

Part of
Public Record

Dear Secretary Quinlan:

Enclosed for filing in the above-referenced proceeding are an original and ten copies of National Railroad Passenger Corporation's Response To Board Directive To Submit Supplemental Information Pertaining to Stay and three CD's containing the Response.

If you have any questions or I can be of any assistance, please let me know.

Respectfully,

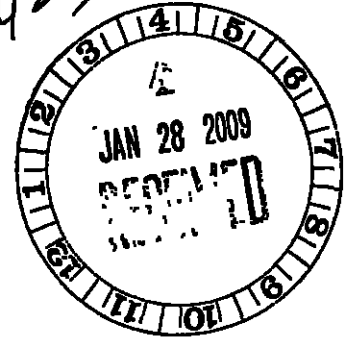
George W. Mayo, Jr

cc: All Parties of Record

Enclosures

224425

BEFORE THE
SURFACE TRANSPORTATION BOARD



DOCKET NO AB-290 (SUB-NO 210X)

NORFOLK SOUTHERN RAILWAY COMPANY
- ABANDONMENT -
IN ATLANTA, FULTON COUNTY, GEORGIA

**NATIONAL RAILROAD PASSENGER CORPORATION'S
RESPONSE TO BOARD DIRECTIVE TO SUBMIT
SUPPLEMENTAL INFORMATION PERTAINING TO STAY**

ENTERED
Office of Proceedings

JAN 28 2009

Part of
Public Record

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PASSENGER CORPORATION

Dated January 28, 2009

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-290 (SUB-NO 210X)

NORFOLK SOUTHERN RAILWAY COMPANY
~ ABANDONMENT ~
IN ATLANTA, FULTON COUNTY, GEORGIA

**NATIONAL RAILROAD PASSENGER CORPORATION'S
RESPONSE TO BOARD DIRECTIVE TO SUBMIT
SUPPLEMENTAL INFORMATION PERTAINING TO STAY**

The National Railroad Passenger Corporation ("Amtrak") hereby responds to the Board's Decision served January 21, 2009 (the "January 21 Decision"), directing Amtrak to submit certain supplemental information pertaining to the stay sought by Amtrak in this proceeding. For the reasons set forth below, Amtrak requests that the currently imposed stay be continued until the condemnation proceeding associated with the "Notice of Intent To File Application under 49 U.S.C. § 24311(c) To Condemn Certain Rail Carrier Property and Request for Establishment of Procedural Schedule" (STB Finance Docket No. 35215) ("Amtrak Condemnation Notice"), filed by Amtrak on January 21, 2009, has been concluded.

**A. THIS PROCEEDING SHOULD BE STAYED PENDING THE
CONCLUSION OF THE AMTRAK CONDEMNATION PROCEEDING**

In the Amtrak Condemnation Notice, Amtrak advised the Board of its intention to file an application under 49 U.S.C. § 24311(c) to acquire the rail passenger service easement owned by Norfolk Southern Railway Company ("NS") over a 4.30-mile railroad line between mileposts DF

633 10 and DF 637.40, in Atlanta, Fulton County, Georgia (the "Line") As the Board knows, the Line – and more particularly, the easement for rail service over the Line that NS retained in 2004 when it sold the underlying real estate to a developer (who resold it to the Atlanta Redevelopment Authority in 2007) – is also the subject of the instant abandonment proceeding

A stay of the effective date of the abandonment exemption authority requested by NS is critically important to the relief Amtrak will be pursuing in its condemnation application Amtrak seeks to condemn NS's easement for rail passenger service over the Line because the routing provided by the Line is critical both for allowing Amtrak's existing service to access the Georgia Department of Transportation's planned Multi-Modal Passenger Terminal (the "Multi-Modal facility") in downtown Atlanta and to the development of high speed rail passenger service in the Atlanta area ¹

Under 49 U S C § 24311(c), the Board has clearly stated jurisdiction to afford Amtrak the relief it seeks, but that jurisdiction turns upon the easement in question constituting the "property of a rail carrier " So long as the abandonment exemption does not become effective, the easement – held as it is by NS – is unquestionably subject to condemnation under the statutory authority afforded the Board If, however, the abandonment exemption were to become effective, NS would have the argument that the easement had ceased to exist, and that because it no longer constituted the "property of a rail carrier," the Board's jurisdiction under 49 U S C § 24311(c) had ceased to apply The Board should ensure that its jurisdiction is maintained to hear Amtrak's condemnation application, and a stay of the abandonment proceeding is the appropriate means of doing so

¹ The Georgia Department of Transportation ("GDOT") filed the initial application for a stay of the abandonment in which Amtrak joined

The Board has faced the same situation once before ² In National Railroad Passenger Corp – Conveyance of Conrail Line in Wayne County, MI, Finance Docket No. 30898, Decision (served Oct. 6, 1986) (“Wall Track I”) (see Attachment 1), the Board instituted a condemnation proceeding in which Amtrak sought to acquire a 0.98-mile line in the Detroit area owned by Conrail and known as the “Wall Track.” Amtrak needed access to the Wall Track to serve a proposed joint intercity and commuter station facility to be located in downtown Detroit. At the time the condemnation proceeding was instituted, there was an ongoing abandonment proceeding related to the Wall Track. To preserve its jurisdiction, the Board “held [the abandonment proceeding] in abeyance pending the outcome of [the condemnation] proceeding.” *Id.* at 1, n. 1.

In a subsequent decision, the Board observed that

[I]f the [Board] were to allow the pending abandonment proceeding to be completed prior to the section 402(d) [now, 49 U.S.C. § 24311(c)] proceeding, [the post-abandonment buyer] might not go through with the purchase and the line could cease to be a line of railroad subject to our jurisdiction. If that were the case, Amtrak’s statutory right to acquire the line could be defeated. Moreover, by allowing the abandonment proceeding to continue, [the post-abandonment buyer] would be able to acquire the subject line and Amtrak would be forced to deal with a developer, as opposed to a railroad company (one here seeking to abandon service as contemplated by [the Rail Passenger Service Act], which could well make the consummation of Amtrak’s intent in acquiring the line and providing the proposed service unnecessarily difficult and more expensive. Therefore, the [Board] properly concluded that holding the abandonment proceeding in abeyance here will fully protect Amtrak’s interest in this matter and is consistent with the Congressional mandate that Amtrak be allowed to acquire rail lines necessary for the provision of intercity rail passenger service.

National Railroad Passenger Corp – Conveyance of Conrail Line in Wayne County, MI, Finance Docket No. 30898, Decision at 4-5 (served Dec. 2, 1986) (“Wall Track II”) (see Attachment 2)

² References to the Board include its predecessor, the Interstate Commerce Commission.

Just as the Board held the Wall Track abandonment proceeding in abeyance while the related Amtrak condemnation proceeding was heard, it should do the same here. The stay of this abandonment proceeding should remain in place, thereby preserving the rail passenger service easement associated with the Line as the “property of a rail carrier,” while the Amtrak condemnation proceeding related to that easement moves forward.

B. AMTRAK’S RESPONSES TO THE BOARD’S SUPPLEMENTAL INFORMATION DIRECTIVE FULLY SUPPORT CONTINUATION OF THE STAY

In its January 21 Decision, the Board directed Amtrak to provide supplemental information with regard to six subjects that bear upon the stay of this proceeding which Amtrak (and GDOT) has requested. In the discussion below, we address each of those subjects in order, and show how each supports continuation of the stay now in effect.

1. How the stay sought by Amtrak complies with the standards for issuance of a stay in *Washington Metro. Area Transit Comm’n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977)

Holiday Tours establishes a well-known, four-part standard for issuance of a stay: “(1) Has the petitioner made a strong showing that it is likely to prevail on the merits[.], (2) Has the petitioner shown that without such relief, it will be irreparably injured[.], (3) Would the issuance of a stay substantially harm other parties interested in the proceedings[.], (4) Where lies the public interest.” 559 F.2d at 843. The stay continuation sought by Amtrak squarely satisfies each of these criteria.

Amtrak’s Likelihood of Success on Merits As outlined in the Amtrak Condemnation Notice, Amtrak has a compelling case for condemning NS’s rail passenger service easement on the Line.

Pursuant to 49 U.S.C. § 24311(c)(1), where “Amtrak and a rail carrier cannot agree on a sale to Amtrak of an interest in property of a rail carrier necessary for intercity rail passenger transportation,” Amtrak may apply to the Board “for an order establishing the need of Amtrak for the interest and requiring the carrier to convey the interest on reasonable terms, including just compensation.”³ The statute further provides that

The need of Amtrak is deemed to be established, and the [Board], after holding an expedited proceeding and not later than 120 days after receiving the application, shall order the interest conveyed unless the [Board] decides that –

(A) conveyance would impair significantly the ability of the carrier to carry out its obligations as a common carrier, and

(B) the obligations of Amtrak to provide modern, efficient, and economical rail passenger transportation can be met adequately by acquiring an interest in other property, either by sale or by exercising its right of eminent domain under subsection (a) of this section

Id.⁴

The statute creates a presumption that, in filing its condemnation application, Amtrak has demonstrated its need for the rail property to be condemned. To overcome that presumption, an opponent of the condemnation must rebut it by making both of the required showings specified in the statute. See National Railroad Passenger Corp. v. Boston & Maine Corp., 503 U.S. 407,

³ NS has advised Amtrak that it is not in a position to sell Amtrak the easement which is the subject of this proceeding. Indeed, NS concedes that “[s]uch discussions would not be productive in any event in view of provisions in the agreements submitted with [NS]’s January 7, 2008 reply to stay concerning the [NS] cooperation with the purchasers, now succeeded by the Authority.” NS Reply to Amtrak Petition To Intervene, at 4 n.1

⁴ The statute does not require the compensation issue to be decided in the referenced 120-day period. Specifically, it provides that “[i]f the amount of compensation is not determined by the date of the Commission’s order, the order shall require, as part of the compensation, interest at 6 percent a year from the date prescribed for the conveyance until the compensation is paid.” 49 U.S.C. § 24311(c)(2)

414-24 (1992) (the opponent “would have to prevail on both the significant impairment and alternative property issues to rebut Amtrak’s presumption of need” (*id.* at 424))⁵

Here, neither of the rebuttal showings can be satisfied. As to the first, conveyance of the passenger rail service easement to Amtrak would not in any respect impair the ability of NS “to carry out its obligations as a common carrier.” NS concedes as much in seeking to abandon the Line. As explained by NS, the Line “has been out of service since the year 2000,” (NS Verified Notice of Exemption, at 14), “[n]o traffic has moved over the Line for at least nine years now,” and “[n]o known prospective shippers are located on the Line” (NS Reply to Amtrak Petition To Intervene, at 8). In sum, NS is not currently providing any common carrier service over the Line, and has not done so for many years. Moreover, even if NS had an interest in reinitiating such service over Line (which clearly it does not), the rail passenger service easement sought by Amtrak would not interfere with such reinitiation.

As to the second showing, there is no other property interest Amtrak could acquire, either through sale or exercise of its eminent domain right under 49 U.S.C. § 24311(a),⁶ that would adequately meet its passenger service obligations comparable to the way they would be met through acquisition of a rail passenger service easement over the Line. The Line is a critical link in the rail route that would be used by Amtrak’s New York-Atlanta-New Orleans *Crescent* and

⁵ The current language of the statute was adopted by Congress in a 1994 recodification of Title 49 of the United States Code, a recodification that was “enact[ed] without substantive change.” Revision of Title 49, United States Code Annotated, “Transportation”, Pub. L. No. 103-272, 108 Stat. 745 (1994).

⁶ 49 U.S.C. § 24311(a) provides Amtrak with authority to condemn through court action interests in property “necessary for intercity rail passenger transportation, except property of a rail carrier, a State, a political subdivision of a State, or a governmental authority.” Condemnation of the property of a rail carrier must proceed, as here, before the Board.

future high speed rail passenger trains to access the proposed Multi-Modal facility in Atlanta. This is made plain in the August 2008 study prepared on behalf of GDOT by the Volpe National Transportation Systems Center, entitled "Evaluation of High-Speed Rail Options in the Macon-Atlanta-Greenville-Charlotte Rail Corridor" (the "Volpe Study")⁷. The study was publicly released by transportation officials from Georgia, South Carolina and North Carolina on January 8, 2009 (see Attachment 4).

The Volpe Study analyzed 11 stations in Georgia, South Carolina and North Carolina located on the Southeast High Speed Rail Corridor (designated by the United States Department of Transportation ("USDOT")) that would be served by high speed rail Id at 2-3, 2-5. With a focus on 6 different scenarios, the Study projects that all high speed rail trains would use the Multi-Modal facility in Atlanta, "which is planned to host commuter rail and bus, intercity bus, and Amtrak trains." Id at 2-3. The preferred route for accessing the Multi-Modal facility involves movement over former NS right-of-way on the East side of Atlanta, including the Line. This routing is preferred because

It is a continuous movement through the MMPT, without any maneuverings that could cause delays or potentially present safety problems. The corridor can be exclusively dedicated to passenger traffic. Although it will require new track, the ROW will allow two tracks and existing structures, though aged[,] exist to cross almost all streets. Only one potential grade crossing will be required.

Id at 4-12. By contrast, the alternative routing via the so-called Trunk Line Route – a combined NS/CSX trunk line on the west side of Atlanta – is not a practical alternative. This routing is heavily used by freight traffic, and would require passenger trains to perform complex backup

⁷ Relevant pages of the Volpe Study are appended as Attachment 3. The entire study can be found at http://www.sehsr.org/reports/hsr/eval_hsr_options.pdf.

movements on main line tracks in order to exit the Multi-Modal facility (the routing does not permit through movement through the terminal) ⁸ Id at 4-16

Securing NS's existing easement for passenger rail operations is therefore an essential prerequisite to the operation of Amtrak's existing service to the planned Multi-Modal facility and to the Charlotte-Atlanta-Macon high speed rail service being planned for the Southeast High Speed Rail Corridor by Georgia and other states along that corridor. Amtrak does not have available to it any alternative property interest acquisitions that would adequately meet its needs.

In sum, the statutory presumption endorsing the condemnation being pursued by Amtrak cannot be overcome. Neither of the two rebuttal showings required to defeat the presumption can be satisfied, and there is no question but that Amtrak is entitled to acquire the rail passenger service easement under the authority of 49 U.S.C. § 24311(c). Accordingly, Amtrak has demonstrated sufficient likelihood of success on the merits to justify continuation of the Board's stay of this proceeding.

Threatened Irreparable Injury to Amtrak As explained above, if the Board's stay is not continued and as a consequence, the passenger rail service easement Amtrak seeks to acquire ceases to be "property of a rail carrier" subject to condemnation under 49 U.S.C. § 24311(c), Amtrak will suffer irreparable harm. The only way Amtrak can assure access to the Line is through the Board condemnation procedures it has initiated.⁹ NS has advised Amtrak that it is

⁸ The Trunk Line Route, with NS and CSX lines converging into a CSX line on the west side of Atlanta which handles more than 100 million gross tons of traffic annually, is depicted on the map appended as Attachment 5.

⁹ As noted above, 49 U.S.C. § 24311(a) provides Amtrak with authority to condemn through court action interests in property "necessary for intercity rail passenger transportation, except property of a rail carrier, a State, a political subdivision of a State, or a governmental authority." If the abandonment were permitted to become effective and Amtrak were then to

not in a position to agree to provide Amtrak with such access ¹⁰ And the Authority has made it clear that its plans for the Line do not include making it available for passenger rail service ¹¹

Lifting of the current stay would be tantamount to a permanent denial of Amtrak access to the Line. Amtrak would thus lose its only feasible routing to the proposed Atlanta Multi-Modal facility, with the result that its ability to provide efficient passenger rail service in the Atlanta market would be fundamentally impaired, and the development of future high speed rail service through Atlanta along the federally-designated Southeast High Speed Rail Corridor would be precluded. This irreparable injury would be avoided by continuance of the current stay.

Lack of Substantial Harm to Other Parties Continuation of the stay would not threaten either NS or the Authority with substantial harm. As to NS, the Line has been out of service since 2000, so NS has not been incurring any operating expenses related to the Line for more than 9 years. Further, NS sold its fee interest in the line (subject to a retained passenger and freight service easement) in 2004, so it fully realized the market value of the line more than 4

seek to invoke this condemnation authority to acquire a rail passenger service easement on the line from the Atlanta Development Authority (the "Authority"), it would doubtlessly be faced with the argument that there is no jurisdiction to condemn Authority property.

¹⁰ See note 3 above.

¹¹ As explained by the Authority,

[T]he City's adopted land use and transportation plans incorporate the BeltLine's light-rail concept into the master plans and related local planning frameworks proposed for the areas adjacent to the Subject Line. The introduction of heavy rail operations into these areas would be inconsistent with, and detrimental to, the planning and development goals of the City.

Reply of The Atlanta Development Authority and Atlanta Beltline, Inc. to Amtrak's Petition To Intervene, at 4.

years ago. See NS Reply to GDOT's Petition for Stay, at 4 & Ex. A. Moreover, NS has been content to permit the passenger and freight service easement on the Line remain in place since the 2004 sale, and only took steps to abandon this easement with the December 3, 2008 filing of its abandonment exemption petition. NS claims vaguely that it "could incur opportunity and holding costs and liabilities in connection with the easement and the track and materials on the line, which will be subject to further deterioration, without earning revenue from it." *Id.* at 10. But these "costs and liabilities" are never explained, and if they exist at all, they are clearly de minimis.¹²

The Authority is in no better position to allege harm to it. Although the Authority asserts that continuation of the stay would "delay the development of a significant public use component of the BeltLine project" (Reply of The Atlanta Development Authority and Atlanta Beltline, Inc. to GDOT's Petition for Stay, at 4), it never explains what development would actually be delayed.¹³ This argument is particularly puzzling given that under its governing

¹² There would not seem to be any "costs or liabilities" associated with the easement, which is not currently being utilized. As to track and materials on the Line – in which NS has retained an ownership interest that Amtrak does not seek to condemn – NS's filing makes it clear that the track materials NS has left undisturbed for nearly a decade after cessation of rail operations are already in a deteriorated state that will not be materially impacted if they are left in place for a few months longer (after which NS would be free to remove them absent a voluntary agreement for the sale of any that might be useable for future rail operations). As described by NS

Four crossings at grade on the line to be abandoned have been removed or paved over during the period of the line's dormancy Sections of track have been removed at various places along the line during its long period of inactivity, and encroachments have occurred at several locations along the line. Much of the right-of-way is now covered by dense vegetation.

NS Verified Notice of Exemption, at 16.

¹³ The Authority's description of its BeltLine project implies that plans to institute light rail service along the BeltLine are shovel ready. In fact, the Multi-Modal facility, which has already

agreement with NS, the Authority did not control the timing of the abandonment exemption filing in the first place, rather, it was NS that selected the timing.¹⁴ If abandonment timing was so important to the Authority, it makes no sense that the Authority agreed to cede this right to NS; yet this is exactly what it did. The Authority's argument for urgent resolution of the abandonment exemption cannot be squared with the fact that NS controlled the timing of the abandonment exemption filing.

Further, the Authority has no valid basis to complain about a stay of the abandonment exemption while Amtrak's condemnation application is addressed. At the time that NS first sold its fee interest in the Line in 2004, and at the time that the Authority acquired that fee interest from the original purchaser in 2004, it was public knowledge that rail passenger service might be initiated over the line. The 2004 Purchase and Sale Agreement provides that "[f]ollowing closing and at the direction and sole option of Purchaser, Seller shall, at no cost to Purchaser,

undergone environmental review and is an essential element of the commuter rail service contemplated under the "Concept 3" plan described by the Authority, is likely to come to fruition many years before the first light rail train rolls over the BeltLine. As indicated in the BeltLine project website (www.beltline.org) and the 2007 newspaper article cited in the Authority's January 26 filing, (i) completion of the BeltLine project will take at least 25 years and require \$2.8 billion in (mostly governmental) funding, and (ii) the Authority owns only a small portion of the 22 miles of railroad right of way ("ROW") required for the BeltLine project: the remaining ROW is owned by freight railroads (and includes active freight lines) and GDOT (which filed the initial application to stay the abandonment of the Line).

¹⁴ The 2007 Supplemental Agreement between NS and the purchasers of the Line gives NS the right to select the timing of an abandonment exemption. "If no rail freight operations occur in the future, Seller may, unless requested otherwise by Purchasers, utilize the procedures of 49 C.F.R. Part 1152, Subpart F to obtain an exemption to abandon or discontinue rail service on the Easement Corridor." NS Reply to GDOT's Petition for Stay, at 5. This Agreement reversed the abandonment language in the original 2004 Purchase and Sale Agreement (id.), which provided that "at the direction and sole option of Purchaser, Seller shall, at no cost to Purchaser, (b) file and diligently pursue all appropriate petitions and other documents for approval or exemption to abandon or discontinue service over the railroad line on the Property with the Surface Transportation Board." Id. at 28.

(a) transfer all rights to provide passenger rail service to Purchaser or Purchaser's designee."¹⁵

Id. at 28. This language was amended later in 2004 to provide

Following Closing and at the request and/or consent of Purchaser, Seller shall negotiate the joint use of the reserved railroad easement lying south of the Clear Creek bridge as described above with an entity qualified to operate rail passenger service. Seller shall not be entitled to any compensation for the transfer of said passenger service rights. Seller shall not negotiate the use of the reserved railroad easement with any party without the prior consent of Purchaser.

Id. at 34. This language was then supplemented by a June 22, 2007 agreement which provides in relevant part: "Purchasers acknowledge that Seller may be required by Federal law to convey all or part of Seller's rights and interests in the Easement Corridor to a third party for continued rail service." Id. at 38.

From the time it acquired the Line, the Authority has been on clear notice that the rail passenger service easement retained by NS might be the basis for reinstitution of active rail service over the Line. Further, the Authority understood that NS might be required under federal law to convey the easement rights necessary to permit continued rail operations over the Line. The fact that Amtrak is now seeking a condemnation remedy to achieve precisely what was foreseen by the NS sale documents, and that time will be required for the Board to address the

¹⁵ This clause appears in the same provision that deals with Purchaser control over any abandonment of the easement retained by NS. The 2004 deed of sale also provides

Following Closing and at the request and/or consent of Purchaser, Seller shall negotiate the joint use of the reserved railroad easement lying south of the Clear Creek bridge as described above with an entity qualified to operate rail passenger service. Seller shall not be entitled to any compensation for the transfer of said passenger service rights. Seller shall not negotiate the use of the reserved railroad easement with any party without the prior consent of Purchaser.

Reply of The Atlanta Development Authority and Atlanta Beltline, Inc. to GDOI's Petition for Stay, Exhibit A at 34

remedy sought by Amtrak, should not be a basis for the Authority to claim harm to itself. The continued stay requested by Amtrak merely preserves the Board's jurisdiction to address issues explicitly contemplated since the 2004 sale of the Line by NS.

Public Interest Considerations Support Continuation of the Stay In the Wall Track condemnation proceeding discussed above, the Board balanced the public interest considerations associated with allowing the Amtrak condemnation to proceed (while holding the abandonment in abeyance) against the public interest considerations supporting an immediate abandonment, and concluded that the former outweighed the latter. See Wall Track II, at 4-5 (see Attachment 2). *The same result should be reached here.* Before permitting abandonment of the Line to become effective, the Board should first exercise the jurisdiction accorded it by Congress under 49 U.S.C. § 24311(c) to hear Amtrak's condemnation application. Indeed, as explained above, Congress has provided that Amtrak is entitled to the condemnation relief it is seeking unless an opponent of such relief can make both of the required showings necessary to overcome this presumed entitlement. To decline to extend the stay would be to ignore this Congressional mandate.¹⁶

Moreover, as the Board has pointed out in the context of adverse abandonment cases (a context which bears many similarities to this proceeding.

¹⁶ NS has made much of the fact that the City of Detroit's planned intermodal facility for Amtrak and commuter trains that was at issue in the Wall Track case was never constructed. Contrary to NS's speculation, it appears that the reason the Detroit facility was not constructed was not loss of interest by Amtrak, but rather that the regional transportation authority elected not to proceed with plans for reinstitution of commuter rail service. See <http://www.detroittransit.org/cms.php?pageid=36>

[I]n assessing the merits of an adverse abandonment request, we look not only at the present or future interest in rail service, but also at the other interests that are implicated. In doing so, we are mindful of Congress' intent, as expressed in many statutory provisions, that lines be kept within the rail system where possible. That is why the Board has stated in the past that authority for an adverse abandonment would not be granted, even in the absence of current traffic on a line, if there is a reasonable potential for future railroad use.

Norfolk Southern Railway Co – Adverse Abandonment – St. Joseph County, IN, STB Docket

No. AB-290 (Sub-No. 286), 2008 WL 391303 (STB served Feb. 14, 2008) (denying

abandonment over a 3.7 mile line which had not had any rail service for over 10 years and where public authorities argued that the right of way was needed for public purposes), accord, Seminole

Gulf Ry., L.P. – Adverse Abandonment – In Lee County, FL, STB Docket No. AB-400 (Sub-No. 4), 2004 WL 2618630 (STB served Nov. 18, 2004)

Here, as Amtrak's condemnation submission confirms, there is reasonable potential for passenger rail service over the Line. Public interest considerations dictate that the Line should not be permitted to become unregulated nonrail property through the abandonment process where this potential exists.

* * * *

As the discussion above demonstrates, each of the four Holiday Tours factors strongly supports continuation of the stay in this proceeding while the Board addresses the condemnation application Amtrak will be filing to acquire a passenger rail service easement over the Line.

2. How this line is necessary to passenger rail and future high-speed rail service through Atlanta, including why other alternatives are not feasible

The Authority asserts that Amtrak has "real practical alternatives" to acquisition from NS of the existing easement for passenger rail operations over the Line. However, the two alternatives the Authority identifies for existing Amtrak and future high speed rail service –

“improved existing facilities outside of downtown Atlanta,” or for passenger trains to access the Multi-Modal facility “from the North, and not via the subject line” – would be no alternatives at all

Relegating existing and future high speed passenger rail service to the outskirts of Atlanta, far from the city’s downtown urban core, would preclude the development of viable passenger rail service that could help alleviate Atlanta’s highway and airport congestion while reducing environmental impacts and energy use. The impacts of such a decision would extend well beyond the city’s borders – as detailed in the Volpe Study, high speed Charlotte-Atlanta-Macon passenger rail service on the federally-designated Southeast High Speed Rail Corridor is not possible without a passenger rail route *through* downtown Atlanta.

The second alternative of having Amtrak and high speed rail passenger trains access the Multi-Modal facility “from the North” is a euphemism for requiring all passenger trains operating in and out of downtown Atlanta to operate via the so-called “Trunk Line” on the west side of the city. The Trunk Line – a north-south rail corridor approximately three miles long that extends from Howell Junction (where it connects with NS’s Washington-Charlotte-Atlanta-New Orleans line used by Amtrak’s *Crescent*) to a location just north of the planned Multi-Modal facility – accommodates separate NS and CSX lines that share the same right-of-way.

It is telling that it is the Redevelopment Authority – and not Norfolk Southern – that has suggested using the Trunk Line as the exclusive route for existing Amtrak trains and future high speed rail trains operating to/from the Multi-Modal facility. As indicated in the historical report appended to NS’s abandonment filing, in the South nearly all railroads lead to Atlanta,¹⁷ and in

¹⁷ NS Verified Notice of Exemption, at 44-53

Atlanta nearly all railroads lead to the Trunk Line. As shown in the appended map (Attachment 5), the major NS and CSX lines through Atlanta – including the very high density Midwest-Southeast main lines of both NS and CSX – converge on the Trunk Line from both the North and South before splitting off into a multitude of other lines. There are few – if any – places in the eastern United States that can match the concentration and complexity of the freight railroad operations over the Trunk Line. It is the railroad equivalent of the Springfield Mixing Bowl, but without – and with no room for – the multitude of overpasses and tunnels that segregate divergent traffic flows at that notorious highway bottleneck.

Trains operating through Atlanta over NS's Washington-New Orleans line – 1 c. Amtrak's *Crescent* and the planned Charlotte-Atlanta-Macon high speed rail service examined in the Volpe Study – would have to operate over *both* the NS and CSX lines in the Trunk Line right of way (since the connection at Howell Junction is to NS, while the Multi-Modal facility would be accessed via CSX). The *Crescent* would have to traverse the entire segment twice on each trip, and reverse direction by backing up on a wye that is actually a CSX main line. As described in the Volpe Study, high speed Charlotte-Macon rail trains would also have to execute a backup move after departing from the Multi-Modal facility.

The Volpe Study indicates that there may be room to construct dedicated high speed tracks on some – but not all – of the Trunk Line right-of-way. Where that is impossible, high speed trains would have to share trackage with NS and CSX trains operating at restricted speeds.

In short, the alternatives suggested by the Authority – precluding passenger and high speed trains from accessing downtown Atlanta, or requiring them to commingle with freight trains on what may be the most densely trafficked freight rail corridor in the eastern United States – are not viable options.

3. The details of any plans Amtrak has for use of this line for passenger rail and/or future high-speed rail service, including any plans it has for the line with regard to the Passenger Rail Investment and Improvement Act of 2008, Pub. L. No. 110-432

Amtrak would route its existing *Crescent* service via the Line upon the completion of the Multi-Modal facility and the upgrading of the Line Pursuant to the provisions of the Passenger Rail Investment and Improvement Act ("PRIIA") decisions about the initiation of additional Amtrak corridor and high speed rail services that would utilize the Line would be made by GDOT ¹⁸ As discussed above, GDOT has developed plans (and obtained necessary environmental clearances) for construction of the Multi-Modal facility and, in conjunction with other state DOTs along the Southeast High Speed Rail Corridor, has recently completed a study of Charlotte-Atlanta-Macon high speed rail service that would utilize the Line

4. An explanation of the length of time that may be necessary to implement those plans

The length of time will depend upon a number of factors, including the availability of federal and other funding Sections 301, 302 and 501 of PRIIA establish new federal matching grant programs for intercity passenger rail with a total federal authorization of \$3.75 billion that could be used by Georgia DOT for upgrading of the Line, construction of the Multi-Modal facility, and the development of corridor or high speed rail service in the federally designated Charlotte-Atlanta-Macon corridor

¹⁸ See PRIIA Sections 209, 301, 302, 303 and 501, which address the states' role in funding corridor and high speed rail services, require states seeking funding to develop state rail plans detailing, among other things, plans for intercity passenger and high-speed rail services and planned capital investments for freight and passenger services, and establish new federal matching grant programs for grants to states for intercity corridor services, high speed rail service, and congestion mitigation

It bears noting that the Redevelopment Authority's and BeltLine's long range plans for development of light rail service on the BeltLine are subject to very similar funding contingencies. The discussion on the Belt Line's website of potential funding sources for the capital costs of the proposed light rail line states that

The BeltLine will be able to apply for the competitive federal transit funds available primarily via the New Starts program and/or the Small Starts program to fund approved transit projects *after* the DEIS process is completed.¹⁹

The referenced "New Starts" federal transit program was the model for the very similar PRIIA's state capital matching program that is one of the potential federal funding sources for GDOT's planned Multi-Modal facility and associated infrastructure improvements.

5. Any steps Amtrak has taken up to this point to attempt to acquire this line

Amtrak has advised NS of its desire to acquire the rail passenger service easement over the Line which is the subject of this abandonment proceeding. NS has responded that it is not in a position to negotiate sale of the easement to Amtrak, even though it is the owner of the easement.²⁰ Presumably, NS is taking its direction from the Authority, which has made it clear that its plans for the Line do not include making it available for passenger rail service.²¹ Amtrak would be prepared to negotiate with the Authority, but as discussed below, anticipates that those

¹⁹ <http://www.beltline.org/Funding/Federal/Funding/tabid/1733/Default.aspx> (emphasis added)

²⁰ As noted above, NS concedes that "[s]uch discussions would not be productive in any event in view of provisions in the agreements submitted with [NS]'s January 7, 2008 reply to stay concerning the [NS] cooperation with the purchasers, now succeeded by the Authority." NS Reply to Amtrak Petition To Intervene, at 4 n.1. The Authority's apparent control over the negotiation of any easement rights with Amtrak raises issues of the Authority having obtained control of rail operations over the Line without prior Board approval, as addressed in GDOT's Petition for Stay.

²¹ See note 11 above.

discussions would not be productive in the absence of continued Board jurisdiction to hear Amtrak's condemnation application

6. Why competing land use objectives of federal, state, local and private stakeholders cannot be resolved through private negotiation if abandonment is authorized

If abandonment is authorized, the Board will have effectively abdicated its jurisdiction to award Amtrak the condemnation relief it is seeking, contrary to clearly expressed Congressional intent. 49 U.S.C. § 24311(c) is designed to permit Amtrak to acquire rail property where it is needed for intercity rail passenger service. Here, as explained above, Amtrak requires use of the Line in order to serve Atlanta's proposed Multi-Modal facility. The only way this use can be assured is through a condemnation proceeding before the Board.

Once abandonment is authorized, NS will have no further property interest in the Line, the Board will lose jurisdiction over it, and the Authority will have no incentive to negotiate with Amtrak. The Board should not permit this to occur. Preservation of the Line as a rail property during the Amtrak condemnation proceeding would be "consistent with the goals of the RTP, particularly 49 U.S.C. 10101 (4), which is to ensure the development and continuation of a sound rail transportation system." Seminole Gulf Ry., L.P. – Adverse Abandonment – In Lee County, FL, supra, 2004 WL 2618630, *5. As the Board has noted, it is "Congress' intent, as expressed in many statutory provisions, that lines be kept within the rail system where possible." Norfolk Southern Railway Co. – Adverse Abandonment – St. Joseph County, IN, supra, 2008 WL 391303.

Amtrak would be pleased to negotiate with the Authority over how to integrate rail passenger service into the Authority's plans for the Line. But the Authority should not be in a position unilaterally to block Amtrak provision of such service over the Line. Ultimately, it is

critical that the Board maintain jurisdiction to address the condemnation relief sought by Amtrak. If the Authority believes that Amtrak is not entitled to such relief, it can oppose Amtrak's case on the merits and the Board will make the ultimate decision, as contemplated by Congress.

CONCLUSION

For the reasons set forth above, the currently imposed stay of this proceeding should be continued until the Amtrak condemnation proceeding is concluded

Respectfully submitted,



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COUNSEL FOR NATIONAL RAILROAD
PASSENGER CORPORATION

Dated January 28, 2009

CERTIFICATE OF SERVICE

I hereby certify this 28th day of January, 2009, that I have caused the foregoing National Railroad Passenger Corporation's Response to Board Directive To Submit Supplemental Information Pertaining to Stay to be served as indicated below on the following counsel of record for the parties:

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George W. Mayo, Jr

ATTACHMENT 1

EC

INTERSTATE COMMERCE COMMISSION

SERVICE DATE

OCT 6 1986

DECISION

Finance Docket No. 30898

NATIONAL RAILROAD PASSENGER CORPORATION--
CONVEYANCE OF CONRAIL LINE IN WAYNE COUNTY, MI

Decided: September 29, 1986

On August 20, 1986, the National Railroad Passenger Corporation (Amtrak) petitioned the Commission to institute a proceeding under section 402(d) of the Rail Passenger Service Act (RPSA), 45 U.S.C. 562(d).¹ By its petition, Amtrak requests that the Commission order that a line of railroad belonging to the Consolidated Rail Corporation (Conrail) be conveyed to it and that the Commission establish the terms for the sale of the line.² This decision institutes the requested proceeding.

1/ Section 402(d) provides, in relevant part, as follows:

(d) Disagreement procedures

(1) If the Corporation and railroad are unable to agree upon terms for the sale to the Corporation of property (including interests in property) owned by the railroad and required for intercity rail passenger service, the Corporation may apply to the Commission for an order establishing the need of the Corporation for the property at issue and requiring the conveyance thereof from the railroad to the Corporation on reasonable terms and conditions, including just compensation. Unless the Commission finds that-

(A) conveyance of the property to the Corporation would significantly impair the ability of the railroad to carry out its obligations as a common carrier; and

(B) the obligations of the Corporation to provide modern, efficient, and economical rail passenger service can adequately be met by the acquisition of alternative property (including interests in property) which is available for sale on reasonable terms to the Corporation, or available to the Corporation by the exercise of its authority under section 545(d) of this title,

the need of the Corporation of the property shall be deemed to be established and the Commission shall order the conveyance of the property to the Corporation on such reasonable terms and conditions as it may prescribe, including just compensation.

2/ Amtrak has also sought the postponement of the issuance of a Certificate of abandonment for this line, which is the subject of an abandonment application by Conrail in Docket No. AB-167 (Sub-No. 947N), Conrail Abandonment in Wayne County, MI. By separate decision, that proceeding is being held in abeyance pending the outcome of this proceeding. Additionally, Amtrak has alternatively requested that, if the line is approved for abandonment, the Commission impose on any transferee the same obligations to which Conrail is subject under section 402 of RPSA, including the obligation to make the line available for use by Amtrak pursuant to section 402(a) of RPSA or to convey the line to Amtrak pursuant to section 402(d). Since the section 402(d) proceeding is being instituted, and the abandonment proceeding is being held in abeyance, consideration of Amtrak's alternative request need not be made at this time. Furthermore, in a letter dated September 10, 1986, Amtrak makes it clear that it has elected to invoke the Commission's jurisdiction under section 402(d) of RPSA to acquire ownership of the line from Conrail and not merely the use of the track under section 402(a) or by means of an easement obtained from a potential transferee of the line.

Finance Docket No. 30898

The subject line consists of a 0.98-mile portion of the line of railroad called the Wall Track, located in Wayne County, MI. It is described as follows:

- (1) The Wall Track from north of the Detroit River Tunnel Main Line tracks beginning at a point at the west side of Bagley (Baker) Street (approximately Milepost 0.3) and extending in an easterly direction to the east side of the former right-of-way at Jefferson Avenue, including the former spur leading to Tenth Street (approximately Milepost 0.56);
- (2) The Wall Track from south of the Detroit River Tunnel Main Line tracks, beginning at a point at the west side of Porter Street (approximately Milepost 0.0) and extending in an easterly direction to the east side of the former right-of-way at Jefferson Avenue (approximately Milepost 0.42).

Amtrak states that it currently operates intercity passenger service in Detroit, MI, and uses the former Michigan Central Depot located at Vernon Highway and Michigan Avenue, approximately 1.5 miles west of downtown Detroit. Under an agreement with the Michigan Department of Transportation, Amtrak plans to relocate its Detroit station operation to a site immediately adjacent to the Joe Louis Arena in downtown Detroit. According to Amtrak, the station relocation project will create a joint intercity and commuter facility constructed and operated in conjunction with the Southeastern Michigan Transportation Authority. Amtrak states that the only rail access to the proposed facility is over the Wall Track in connection with other rights-of-way acquired by the City of Detroit for this project. Amtrak concludes that, if it is unable to obtain the use of the Wall Track or acquire its ownership, relocation of the station to the Joe Louis Arena site for commuter and intercity operations may be foreclosed.

Amtrak states that it has made two written offers to purchase the subject line from Conrail. However, Conrail has accepted neither offer according to Amtrak but, rather, has sought to abandon the rail line. Amtrak therefore considers that Conrail and it have been unable to agree on the terms of sale within the meaning of section 402(d). Thus, in view of the failure of Amtrak and Conrail to agree and the need of Amtrak to use the Wall Track for intercity rail passenger service, Amtrak requests that the Commission institute a proceeding under section 402(d) for an order establishing the need of Amtrak for the Wall Track and requiring its conveyance to Amtrak on reasonable terms and conditions. The requested proceeding will be instituted.

Great Lakes Railway Company (GLRC) filed a petition on September 4, 1986, for leave to intervene in this proceeding. Previously, on August 20, 1986, GLRC made a timely offer of financial assistance pursuant to 49 U.S.C. 748(d) and 49 U.S.C. 10905(d)-(f) to acquire the Wall Track. Since GLRC is competing with Amtrak for the acquisition of this line, it has shown good cause for being allowed to participate as a party to this proceeding and its petition will be granted.

There are currently no Commission regulations to guide the parties in the submission of their evidence. The parties therefore should present all relevant information and supporting documents. Amtrak must also set forth exactly how much of the line and attendant property it believes necessary for the provision of the proposed service.

With respect to evidence regarding compensation and other terms of sale, the parties should be guided by the Commission's decisions establishing terms and conditions for the sale of rail lines under 49 U.S.C. 10905. The parties must fully explain whatever methodologies they use in determining just compensation

Finance Docket No. 30893

for the line and any other terms and conditions of sale. Additionally, Conrail must promptly make available to Amtrak any information relevant to the determination of these matters. Specifically, Conrail must make available to Amtrak, within 10 days from the service date of this decision, its railroad valuation maps covering this line or a better physical description of the line as requested by Amtrak, and sufficient information regarding the third party non-railroad easement along the right-of-way referred to in Exhibit D of its abandonment application to allow Amtrak to evaluate the effect of this easement on the value of the underlying real estate.

Finally, Amtrak has indicated that it would allow continued rail freight service over the line by Conrail. The parties should address whether Amtrak should be required to permit continued rail freight service by Conrail or another rail carrier and how best this might be accomplished, i.e., whether the requirement should be made a term or condition of sale under section 402(d).

This action will not significantly affect either the quality of the human environment or energy conservation.

It is ordered:

1. A proceeding is instituted under section 402(d) of RPSA.
2. QLRC's petition for leave to intervene is granted.
3. This proceeding will be handled under the modified procedure. The parties must comply with the Commission's Rules of Practice, including 49 C.F.R. 1104 and 1112.
4. The schedule for filing verified statements of fact and argument is as follows:

Amtrak's initial statement - November 5, 1986
Conrail's and QLRC's statements - December 3, 1986

Amtrak's reply statement - December 23, 1986

Amtrak must serve its statements on:

Donald A. Brinkworth, Esq. Chandler L. van Orman, Esq.
General Counsel - Litigation Wheeler & Wheeler
Consolidated Rail Corporation 1729 H Street, NW
1138 Penn Center Plaza Suite #200
Philadelphia, PA 19104 Washington, DC 20006

Conrail and QLRC must serve their statements on:

William F. Erkelens, Esq.
General Solicitor
National Railroad Passenger Corporation
800 N. Capitol Street, N.W.
Washington, DC 20001

5. A decision will be issued on or before 120 days after the close of the evidentiary period.

6. Within 10 days from the service date of this decision, Conrail must make available to Amtrak any information relevant to the determination of just compensation for the line and other terms and conditions of sale, as discussed above.

JAN.16.2009 6:10PM

AMTRAK CORPORATION

NO 434 F 23

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7. Except for good cause shown, preliminary motions and requests for cross examination of witnesses or for other relief will not be acted on prior to the date that all verified statements are due.

8. This decision is effective 3 days from the date of service.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Stettin, Andre, and Lamboley Commissioner Andre concurred in the result.

(SEAL)

Norata R. McGee
Secretary

ATTACHMENT 2

INTERSTATE COMMERCE COMMISSION

SERVICE DATE

DECISION

DEC 2 1986

Finance Docket No. 3089d

NATIONAL RAILROAD PASSENGER CORPORATION -- CONVEYANCE OF CONRAIL
LINE IN WAYNE COUNTY, MI

Decided November 26, 1986

The Consolidated Rail Corporation (Conrail) has filed a petition pursuant to 49 C.F.R. 1117.1 to stay the procedure schedule established in this proceeding by decision served October 5, 1986, and effective October 9, 1986, pending judicial review of the Commission's decision in AB-167 (Sub-No. 947N), Conrail Abandonment in Wayne County, MI (not printed), served October 5, 1986.

BACKGROUND

The National Railroad Passenger Corporation (Amtrak) currently operates intercity passenger service to Detroit, MI, using the former Michigan Central Depot^{1/} located approximately 1.5 miles west of downtown Detroit. Under an agreement with the Michigan Department of Transportation (MDOT), Amtrak plans to relocate its Detroit station operation to a site immediately adjacent to the Joe Louis Arena in downtown Detroit. The station relocation project will create a joint intercity and commuter facility constructed and operated in conjunction with the Southeastern Michigan Transportation Authority (SEMTA).^{2/} This project is based on plans initiated nearly a decade ago and is strongly supported by the City of Detroit since it creates the opportunity for commuter rail service to the central business district.^{3/}

A critical and necessary rail link in the provision of the proposed service is an approximately 0.38-mile line of railroad owned by Conrail known as the Wall Track.^{4/} It is essential since the only rail access to the proposed facility requires movement over that line. On October 1, 1985, Conrail filed a Notice of Insufficient Revenues for the Wall Track. By letter dated November 1, 1985, Amtrak formally advised Conrail in writing that Amtrak required the use of the subject line in connection with the relocation of Amtrak's Detroit station. However, on December 10, 1985, Conrail entered into an agreement with Kaybee Corporation (Kaybee) to sell the Wall Track to Kaybee for \$300,000, conditioned upon Conrail first abandoning the line. Kaybee also contracted to purchase, and has since purchased, several parcels of land owned by Conrail that adjoin the Wall Track but which apparently contained no active rail lines, and were obtained solely for redevelopment purposes.^{5/} Conrail proceeded to file an application on May 23, 1986, under section 108 of the Regional Rail Reorganization Act of 1973,^{6/} to abandon the Wall Track and that proceeding was docketed as AB-17 (Sub-No. 947N). Subsequently, Amtrak made offers to purchase the

^{1/} Kaybee Corporation (Kaybee) now owns and is engaged in the redevelopment of the Michigan Central Depot.

^{2/} For example, the City has already built a major structure with two-story bays several hundred feet long to receive trains providing the proposed service.

^{3/} Kaybee is not authorized by its Articles of Incorporation to conduct rail-road operations.

^{4/} This section was added by the Northeast Rail Service Act of 1981 (NEPSA) Pub. L. No. 97-15.

subject line in letters dated June 4 and August 14, 1986, but Corrail refused to negotiate with Amtrak.

On August 23, 1986, Great Lakes Railway Company (GLRC) made a timely offer of financial assistance pursuant to 45 U.S.C. 532-533(d) and 49 U.S.C. 13505(d)-(f) to acquire the Wall Track. GLRC is a wholly-owned subsidiary corporation of Kaybee created specifically to acquire the Wall Track and to conduct rail operations over it. GLRC has offered to provide continued rail freight service on the line on an as-needed basis, but at the time the offer was made, it owned no equipment and was not engaged in the provision of any other rail service. GLRC has offered a lower price of \$2,425 for the Wall Track as a "rail property." GLRC has also indicated its willingness to negotiate an easement with Amtrak in order that Amtrak may provide passenger service over the subject line.

Also on August 20, 1986, Amtrak filed a petition with the Commission stating that it has made an offer of financial assistance for the line either the meaning of 45 U.S.C. 532 and requesting that the Commission postpone the issuance of a certificate of abandonment for the subject line. If the Commission does not postpone the issuance of the abandonment certificate, Amtrak has alternatively requested that the Commission condition the issuance of the certificate in a manner to protect Amtrak's statutory rights to use the Wall Track under section 402 of the Rail Passenger Service Act (RPSA), 45 U.S.C. 552.

Concurrently, Amtrak also petitioned the Commission to institute a proceeding under section 402(d) of RPSA for the conveyance of the Wall Track to it by Corrail and for the establishment by the Commission pursuant to that statute of the terms for the sale of the line. Similarly, Amtrak again requested in this petition that, if abandonment of the line is not postponed, that the Commission impose on any transferee the same obligations that Corrail is subject to under section 402 of RPSA, including the obligation to make the line available for use by Amtrak under section 402(a) of RPSA or to convey the line to Amtrak pursuant to section 402(d). However, in a letter dated September 10, 1986, Amtrak clarified its position by specifically electing to invoke the Commission's jurisdiction under section 402(d) of RPSA to acquire ownership of the line from Corrail. It is not merely the use of the track under section 402(a) or (b), means of an easement obtained from a potential transferee of the line. Finally, Amtrak has indicated that it would allow continued rail freight service over the line by Corrail or other responsible persons desiring to provide such service.

By decision served October 6, 1986, and effective October 9, 1986, the Commission instituted a proceeding pursuant to section 402(d) for the conveyance of the Wall Track by Corrail to Amtrak, and granted GLRC's petition for leave to intervene in the proceeding. The proceeding was set for modified procedure, and a procedural schedule was established for the submission of evidence and argument. Under the schedule, Amtrak's initial statement was due November 5, 1986, Corrail's and GLRC's statements were due December 3, 1986, and Amtrak's reply statement was due December 23, 1986. It is this procedural schedule that Corrail wants stayed. Additionally, the Commission ordered Corrail to make available to Amtrak certain relevant information and ordered that a final decision be issued in this proceeding on or before 120 days after the close of the evidentiary record.

Concurrently, by decision served October 6, 1986, and effective October 9, 1986, in Docket No. AB-157 'Sub-No. 94-4', Corrail Abandonment in Wayne County, MI, the Commission also held the abandonment proceeding involving the Wall Track in abeyance until otherwise ordered, pending a final determination in the section 402(d) proceeding here. The Commission further ordered that Corrail may now discontinue freight service over the wall

Track 3/ Conrail has appealed this decision to the Special Court 6/

On November 4, 1986, the Director of the Office of Proceedings orally granted an extension of time for filing pleadings in Finance Docket No 30898 at the request of Amtrak and with the concurrence of Conrail. Pursuant to that extension the filing dates became November 21, 1986 for Amtrak's initial statement, December 19, 1986 for Conrail's and GARC's statements, and December 29, 1986 for Amtrak's reply statement. This extension was granted because the parties indicated that they were attempting to resolve their differences which would moot the proceeding in Finance Docket No 30898. Subsequently, by letter dated November 20, 1986, Amtrak requested a further extension for filing its initial statement due to the unexpected failure of the parties to reach an agreement by that date and due to the absence of Amtrak's witness in the case. Conrail also sought a specified extension apparently as a result of Amtrak's request. Neither party objected to the other's request. On November 21, 1986, the Director of the Office of Proceedings orally granted these requests. The filing dates now are November 26, 1986 for Amtrak's initial statement, January 7, 1987 for Conrail's and GARC's statements, and January 19, 1987 for Amtrak's reply statement.

DISCUSSION AND CONCLUSIONS

To justify a stay pending judicial review, a petitioner must show that it will suffer irreparable harm absent a stay, that the petitioner will likely prevail on the merits, that a stay will not substantially harm other parties, and that a stay is in the public interest. Virginia Petroleum Jobbers Ass'n v FCC, 253 F.2d 92, 100 (D.C. Cir. 1958), Washington Metropolitan Area Transit Comm'n v Board of Directors, 559 F.2d 891 (D.C. Cir. 1977). Conrail has not made this showing here.

Irreparable harm. The threshold consideration in deciding whether injunctive relief is appropriate is whether the petitioning party will be irreparably harmed without it. Sampson v Murray, 415 U.S. 61, 88 (1974). Otherwise, injunctive relief is not needed.

There are several well-settled principles for guidance in determining whether irreparable harm has been shown. First, the injury must be both certain and great. It cannot be theoretical, but must be actual. Injunctive relief "will not be granted against something merely feared as liable to occur at some indefinite time." Connecticut v Massachusetts, 252 U.S. 660, 674 (1930). The movant must show that "[t]he injury complained of [is] of such imminence that there is a 'clear and present' need for equitable relief to prevent irreparable harm." Aanland Co., Inc. v. FCC, 409 F. Supp. 29, 30 (D.C. Cir. 1976), aff'd, 558 F.2d 977 (D.C. Cir. 1976). (Citations and internal quotations omitted). Finally, injuries in terms of money, time and energy necessarily expended in the absence of a stay are not enough, and the possibility that adequate compensatory or other corrective relief will be available at a later date weighs heavily against a claim of irreparable harm. See Virginia Petroleum Jobbers Ass'n v FCC, *supra*, at 925. Here, Conrail has failed to show it would be irreparably injured absent a stay.

Essentially, Conrail advances two arguments of how it will be harmed absent a stay. First, Conrail argues that, if the section 402(d) proceeding is adjudicated before the Special Court

3/ By letter dated October 9, 1986, as supplemented by letter dated October 17, 1986, Boag Cold Storage Warehouse, Inc. (Boag) petitioned for reconsideration of that portion of the Commission's decision allowing Conrail to discontinue freight service over the subject line. By separate decision in that proceeding, the Commission is denying Boag's petition.

4/ The Special Court, Regional Rail Reorganization Act of 1973, created by 45 U.S.C. 7.3.

reaches a decision on its appeal of the Commission's decision not doing the abandonment proceeding in abeyance, the legal issues raised in that case may be mooted and Conrail may be denied the right to adjudicate them. Such an argument is speculative at best and clearly does not constitute immediate and irreparable harm.

It is doubtful that the mere mooting of legal issues could ever constitute irreparable harm. However, here it is clear that it would. Congress enacted the RPSA in 1977 and this is the first instance where Amtrak has used the Commission's powers under section 402(d) to acquire a line of railroad necessary for intercity passenger service. In contrast, the Commission has granted without delay some 1,000 abandonment applications by Conrail under NEBSA. Thus, the need for judicial review of the resolution of the conflicting statutes for future application is essentially non-existent.

Second, Conrail asserts that it will be harmed by having to participate in the section 402(d) proceeding which may itself become moot if Conrail is successful in its appeal. Requiring a party to participate in an agency proceeding does not constitute irreparable harm. Renegotiation Bd. v. Santercraft Clothing Co., Inc., 435 U.S. 1, 24, 1977. Even if a price is set by the Commission in that proceeding, there has been no showing that Conrail would receive less compensation under section 402(d) than it would otherwise for the sale of the line. Even if a sale to Amtrak were set aside by the court, and we think there is little chance that it will be, Conrail can easily be made whole for any damage that it suffers.

Finally, section 402(d) provides for expedited proceedings which would be shortened or possibly terminated if the parties should agree on a price for the line or otherwise settle their dispute. In any event, the Commission will promptly resolve the section 402(d) proceeding to avoid subjecting Conrail to any unwarranted delay. Moreover, one of the primary interests that NEBSA protects is the speedy abandonment of unprofitable lines by Conrail. Here, granting a stay will in all probability result in an even slower disposition of this matter and therefore would not be in the public interest.

Likelihood of prevailing on the merits. Conrail fails to address directly this criterion in its petition for a stay, nor otherwise has it made a strong showing that it is likely to prevail on judicial review. Here, the Commission has faced the first time with the unusual situation of the interaction between two conflicting statutes. The Commission was obliged to resolve this conflict and did so in a reasonable manner.

Under section 402(d) Amtrak has the right to acquire any line of railroad, with certain exceptions not relevant here, for the provision of intercity passenger service. Pursuant to RPSA, Conrail has the right to abandon any revenue deficient line of railroad unless a timely offer of financial assistance is filed under section 10905 of the Interstate Commerce Act for the continuation of rail service. As Conrail points out, Amtrak's offer is for the establishment of passenger service over a line formerly providing freight service. This is a purpose that was not so contemplated by section 10905 and therefore may not protect Amtrak's right to acquire the line.

Furthermore, CLAC's competing offer does not guarantee that the line will remain in rail service and continue to be subject to the Commission's jurisdiction and Amtrak's right of acquisition under section 402(d). This is true because an offer of financial assistance under section 10905 is not binding on the offeror. Thus, if the Commission were to allow the pending abandonment proceeding to be completed prior to the section 402(d) proceeding, CLAC might not go through with the purchase and the line could cease to be a line of railroad subject to the jurisdiction. If that were the case, Amtrak's statutory right to acquire the line would be defeated, resulting that Amtrak

Initially offers to purchase the line conditioned on prior abandonment and that it apparently still wants to acquire the line through its subsidiary primarily to redevelop the underlying real estate. It is certainly reasonable to conclude that such a result would indeed be likely. Moreover, by allowing the abandonment proceeding to continue, SLRC would be able to acquire the subject line and Amtrak would be forced to deal with a developer, as opposed to a railroad company one here seeking to abandon service as contemplated by RPSA, which could well make the continuation of Amtrak's intent in acquiring the line an possibility. The proposed sale is unnecessarily difficult and expensive. Therefore, the Commission properly concluded that holding the abandonment proceeding in abeyance here will fully protect Amtrak's interests in this matter and is consistent with the Congressional mandate that Amtrak be allowed to acquire rail lines necessary for the provision of intercity rail passenger service.

In reaching its decision, the Commission also considered the unique factual situation presented here. In particular, the Commission noted that the State of Michigan, the City of Detroit, and Amtrak have been planning the subject relocation for the past decade. Amtrak's various requests are all based on its need to provide the proposed passenger service, and it has offered to provide an easement for continued freight service, if needed. On the other hand, Conrail's abandonment of this line would lead to the cessation of service over this line for purposes of redeveloping the underlying real estate.

Furthermore, the area of statutory conflict presented here is quite limited. Specifically, the Commission's decision affects only Conrail's ability rapidly to abandon service and its ability to sell the line to the party it previously wishes to sell. As previously discussed, this is the first instance in sixteen years that Amtrak will have had to resort to the provisions of section 402(d) to acquire a line of railroad necessary for the provision of intercity passenger service. In contrast, the Commission has processed without delay some 1,000 abandonment applications filed by Conrail under RPSA. Moreover, the Commission has attempted to give as much effect to RPSA as practicable in this situation by allowing Conrail to cease its operations over the line now. The Commission specifically acknowledged Conrail's right to abandon the subject line or stated that its holding the proceeding in abeyance here affected the timing of the exercise of that right.

In conclusion, Conrail has failed to demonstrate that the Commission erred in holding the abandonment proceeding in abeyance pending completion of the section 402(d) proceeding.

Public Interest and Harm to Other Parties. Conrail, to Conrail's speculation, Amtrak would likely be hurt by a stay of the procedural schedule pending completion of judicial review. Despite Conrail's conjecture otherwise, Amtrak has established unequivocally that it wants to proceed under section 402(d) to acquire the Rail Track. Section 402(d) provides for expedited proceedings. The delay of what amounts to an indeterminate period of time would certainly be contrary to this Congressional mandate under both RPSA and RPSA. As stated previously, the Commission intends to resolve the section 402(d) proceeding as quickly as practicable, but entry of the stay would prevent that action. Moreover, Amtrak's right to purchase the Rail Track from Conrail could be impaired or lost if the section 402(d) proceeding is not completed prior to abandonment of the line.

/s/ Kaybee created a paper entity, SLRC, to acquire the line and attendant real estate under section 402(d). SLRC indicated to the line of its offer that no traffic was moving over the line for had been in the recent past, but that it would provide service on an as-needed basis for any future traffic.

Conversely, Conrail's contentions of harm to it and other parties if the procedural schedule is not stayed are unconvincing. The potential harm to Conrail has been discussed, supra, and it is unclear how staying the procedural schedule in the section 402(d) proceeding would be of any measurable benefit to the shipper located on the subject line.^{3/} Even if the line is purchased by GLRC under section 13905, it would be subject to immediate sale to Amtrak under section 402(d). Thus, any service that might be provided to the shipper in the interim by GLRC would be short lived. Conrail apparently has agreed to continue to provide service until this conflict is resolved. Under the circumstances, it appears that going forward with the section 13905 procedures would not ultimately benefit the shipper and would be a useless exercise.

On balance, the public interest requires rejection of Conrail's stay request. Amtrak seeks to purchase the subject line to implement a decade-old plan to provide inter-city, passenger and commuter service to downtown Detroit. Amtrak has indicated that it will grant an easement over the line for the future provision of freight service, if needed, and will maintain the line itself. Amtrak's purchase will also result in Conrail's abandonment of the line. Amtrak has exercised its statutory right to have a proceeding instituted under section 402(d) for the acquisition of the subject line necessary for this proposed service, and that statute provides for expedited decision-making by the Commission. A grant of a stay pending judicial review would not only be in direct contravention of this express statutory purpose but also that of VERSA which provides expedited procedures for Conrail in abandoning unprofitable rail lines. Finally, Amtrak is supported in this matter by WDO and the City of Detroit, a strong indication that timely completion of the section 402(d) proceeding is in the public interest.

In view of the above discussion, it would not be in the public interest to grant a stay.

This decision will not significantly affect either the quality of the human environment or energy conservation.

It is ordered:

1. The petition for stay is denied.
2. This decision is effective on the date served.

By the Commission, Heather J. Gradison, Chairman

Vereta R. McGee
Secretary

(SEAL)

^{3/} The Commission has allowed Conrail to discontinue service over the line in AB-167 (Sub-No. 947N), which is an entirely separate proceeding. Furthermore, the Commission did not require Conrail to discontinue service, but merely permitted Conrail to take such action.

ATTACHMENT 3



**Evaluation of High-Speed Rail Options in the
Macon-Atlanta-Greenville-Charlotte Rail Corridor**

August 2008

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1. INTRODUCTION

1.1 Background

The U S Department of Transportation (DOT), in conjunction with the Transportation Research Board (TRB), has undertaken research that indicates that high-speed ground transportation (HSGT) systems, including high speed rail (HSR), could be a competitive alternative to highway and domestic air travel in high-density travel markets and corridors in the United States, including the Boston-New York, New York to Washington, and San Francisco to Los Angeles corridors. TRB Special Report 233, *"In Pursuit of Speed, New Options for Intercity Passenger Transport,"* concludes that "HSGT systems could be an effective alternative in corridors where travel demand is increasing, but expanding capacity to reduce highway and airport congestion and delays is very difficult."

In its 1997 study *"High-Speed Ground Transportation for America,"* (commonly referred to as the Commercial Feasibility study or CFS), the FRA estimated the total costs and benefits of implementing a range of HSGT systems from incremental HSR with top speeds of 90 to 150 miles per hour (mph) ("HSR," termed "Accelerail" in the 1997 report) to new HSR (with 175-200 mph top speeds) and maglev (up to 300 mph) in 11 illustrative corridors. The study identified the potential for diverted trips to competitive HSR and ground transportation services, especially for trips between 100 and 600 miles. The study found that HSGT's total benefits exceed total costs in many of the illustrative corridors.

The Volpe National Transportation Systems Center (Volpe Center) supported the FRA in the preparation of the CFS by making the ridership, cost, financial, environmental, and benefits estimates for the various combinations of technologies and corridors. The models and methods developed for the corridors studied in the CFS, including the analysis of the Southeast High Speed Rail Corridor (SEC) from Washington to Charlotte, will be applied to the case in which the SEC corridor is extended to South Carolina and Georgia.

This study corridor is part of the designated list of 11 HSR corridors authorized by ISTEA (Intermodal Surface Transportation Efficiency Act) in 1991 and supplemented by TEA-21 (Transportation Equity Act for the 21st Century) in 1998. This study will focus on the expanded SEC extending from Washington, D C, south through the Carolinas and on to Georgia and Florida. The study area is a smaller section of the SEC starting in Charlotte, moving southwest through Greenville and Atlanta, and finally south to Macon. The potential rail corridors previously studied in the CFS did not include the portion from Charlotte, North Carolina, to Atlanta, Georgia, with an extension to Macon, Georgia. However, the North Carolina, South Carolina, and Georgia Departments of Transportation, with technical guidance from FRA, intend to analyze this route segment in a new study as an extension of the SEC (Washington to Charlotte) studied in the CFS by employing funding contained in the consolidated FY2004 appropriations, Public Law No. 108-199.

The Georgia Department of Transportation (GDOT), South Carolina Department of Transportation, and North Carolina Department of Transportation have signed a memorandum of understanding (MOU) to undertake an analysis of the Macon-Atlanta-Greenville-Charlotte segment under which GDOT will act as the lead state for the work. Federal funds for this purpose will be made available under this agreement to GDOT. The three state departments of transportation, through the MOU, have designated GDOT to oversee the agreement and conduct the project. FRA will serve in an advisory capacity to the states.

1.2 Purpose

This new study will assess the viability of a public-private partnership for rail development in this corridor extension where Government agencies invest in capital construction and maintenance of HSR infrastructure and a private, non-subsidized operator provides for train operations. This new business model for HSR was developed by the Southeastern Economic Alliance in its recent report. The train service to be studied for this corridor will have top speeds that are significantly faster than existing Amtrak service, might follow existing rail routes or employ a new straighter right-of-way, would likely have links at the end-point cities to connecting rail and air services, and would possibly incorporate through-train services to other non-corridor rail-served cities.

The Volpe Center will conduct market and economic studies to evaluate the feasibility and potential impact of various levels of HSGT in the Macon and Atlanta, Georgia, to Charlotte, North Carolina, HSR corridor. The Volpe Center will (1) recommend rail top speeds and technologies that balance potential ridership and revenues with infrastructure and operating costs, (2) forecast ridership over at least a twenty-five year time horizon, (3) assess whether operating revenues might exceed operating costs and infrastructure maintenance costs, (4) compare this corridor's performance with similar rail corridors in other regions, and (5) determine other quantifiable economic impacts of HSR corridor investments.

1.3 Scope

The Volpe Center will build upon and extend the work previously completed by the Volpe Center for the FRA with respect to the SEC segment between Washington, D.C., and Charlotte, North Carolina, by accomplishing the tasks set forth below. Using the previous work as a paradigm, there will be seven main components to the analysis of intercity passenger rail in the Macon and Atlanta, Georgia, to Charlotte, North Carolina, corridor segment.

- Scenario Development
- Demand and Revenue Estimation
- Capital Cost Estimation

- **Operating and Maintenance (O&M) Cost Estimation**
- **Corridor/Network Financial Analysis**
- **Societal Impacts Estimation**

The following report documents an initial planning and feasibility study for intercity passenger rail service in the corridor from Charlotte, NC to Macon, GA. Because of the preliminary nature of this planning and feasibility study, all assumptions and results are subject to change as further and more detailed planning studies and design are completed. Further work including analysis of physical improvements required and financial and environmental analysis of the plan will be required before any major policy decisions can be made.

2. SCENARIO DEVELOPMENT

2.1 Introduction

The study's conclusions and recommendations will be determined by a set of plausible assumptions and well-designed scenarios defined at the beginning of the effort. The project initiators, the Georgia, South Carolina, and North Carolina Departments of Transportation, with their FRA technical advisors, have defined the initial parameters for the evaluation, including the end-point and some intermediate cities for the core corridor, at least one of several potential train speeds/technologies (i.e., top speed at least 125 mph) to be investigated, and the general outlines of the public-private partnership for rail development and operation in this corridor. The Volpe Center and GDOT will define more specific options/scenarios, make broad assumptions, and specify detailed inputs to the modeling process. Some of the variables and information that need to be specified are cities and airports served, station locations, existing rail lines and right-of-ways (ROW) used, passenger amenities provided, ownership assumptions, speed or trip time goals, and technologies used.

The major distinguishing characteristic of the scenarios will most likely be that each describes a different system concept (alignment and technology). The technology options defined in the FRA's CFS, i.e., IHSR with varying top speeds and new HSR, will be selected. For reasons of cost and connectivity with existing plans for the routes north of Charlotte, this study will only seek conventional modes of HSR transportation.

This study will evaluate the development and operating costs and potential passenger ridership associated with providing high-speed rail (HSR) service to the Macon, Atlanta, Greenville/Spartanburg, and Charlotte corridor. The train service to be studied for this corridor will have top speeds that are significantly faster than existing Amtrak service (with maximum speeds of 79 mph), might follow existing rail routes or employ a new straighter right-of-way, would likely have links at the end-point cities to connecting rail and air services, and would possibly incorporate through-train services to other non-corridor rail-served cities.

The study assessment will be based on a new business model concept for HSR that was developed by the Southeastern Economic Alliance in its recent report. This concept consists of a public-private partnership for rail development in this corridor where Government agencies invest in capital construction and maintenance of HSR infrastructure and a private, non-subsidized operator provides for train operations.

2.2 Technology Options

This section describes the six technology options for passenger rail vehicles proposed for evaluation of the planning study for the Southeast High Speed Rail project. The technology descriptions include consist and individual vehicle characteristics (i.e. cost,

weight, and seating), as well as an estimate for performance over a 365-mile (distance from Charlotte through Atlanta to Macon) non-stop route segment

The major distinguishing characteristic of the scenarios is that each describes a different system concept (alignment and technology), with the technology options defined to be consistent with the ones defined in the Federal Railroad Administration's 1997 report, *"High-Speed Ground Transportation for America,"* (commonly referred to as the Commercial Feasibility study or CFS), i.e., incremental high-speed rail with varying top speeds and new high-speed rail. For reasons of cost and connectivity with existing plans for the routes north of Charlotte, this study will not investigate maglev options

The six technology options considered fall into three basic categories. The first is Conventional Rail Transportation (CRT) with appropriate track improvements and improved signaling equipment at 90 mph. The 90 mph case would require all trains/track operating on the alignment to be equipped with upgraded signaling equipment. For the conventional 90 mph case, a tilting coach is assumed which is similar to tilting coaches as described below for high-speed rail.

High Speed Rail (HSR) covers the speed range from 110 mph to 150 mph with both electric power cars and fossil fueled locomotives. Increasing levels of change to the existing alignment will need to occur as the maximum speeds are increased. For the High Speed Rail 110-125 mph cases all coaches are assumed single level and tilting. The single level cars are some variation of an X2000, Talgo, or Acela style coach.

Finally, Very High Speed Rail (VHSR) is a 200 mph rail system, operating on a new alignment. The Very High Speed Rail 200 mph trainset is assumed to be similar to the European TGV consist. The trainset is made up of two end power cars and any number of articulated passenger vehicles.

Trainsets for each type of service would be optimized to provide frequent departures while minimizing the operations and maintenance costs. Typically this is a tradeoff between short and long trains. For this evaluation we have chosen consist configuration seating about 264 passengers as the baseline. This can be achieved using a single power engine and four passenger cars (1-4) or leading and trailing power cars and four center passenger cars (1-4-1) consist of single level equipment or a single power engine and three passenger cars (1-3) configuration using bi-level equipment. For the very high-speed case (200 mph), the baseline consist is the 1-6-1 (with leading and trailing power cars and six center passenger cars in married sets) seating 284.

The 90 mph and 110 mph cases were previously evaluated in the May 2004 report, "Macon-Charlotte Southeast High Speed Corridor Plan" by Georgia Rail Consultants. This new evaluation will provide an opportunity to re-examine assumptions made in that study, e.g., concerning the degree to which track straightening along rail right-of-ways is feasible and cost-effective, in the context of (and consistent with) the assumptions and parameters made for high-speed and very high-speed rail options.

2.3 Alignment and Routing

The alignment and routing alternatives for Southeast High-Speed Rail Charlotte to Macon corridor would have to be investigated in detail as part of subsequent studies. This exposition lays out some of the ground rules that will be used to match train technologies to feasible, least cost routes. The major tradeoff is between train speed and the cost (and availability) of right-of-way that is straight enough to support that train speed. The cost of ROW, even for the lowest-level improvement (reconstruction to speeds of 79-100 mph) will entail construction costs approaching \$2,000,000/mile, plus the cost of new train control systems. Developmental costs include right-of-way acquisition, track and supporting structures, train control, electrification, stations and maintenance facilities. Potential impacts on environmentally or historically sensitive areas and relocation of housing and other facilities are also major differential considerations.

2.4 Stations

This analysis will assume the same stations as used in the prior corridor study¹ for the basic set of scenarios. These are

Macon,
Griffin,
Aviation Blvd/Last Point (serving the Atlanta Airport),
Atlanta MMPT,
Gainesville,
Toccoa,
Clemson,
Greenville,
Spartanburg,
Gastonia, and
Charlotte

In Atlanta, the HSR trains would use the MMPT (Multi-Modal Passenger Terminal), which is planned to host commuter rail and bus, intercity bus, and Amtrak trains. Direct connections to MARTA's Five Points station and local bus would also be available.

The station at either East Point or Aviation Boulevard would provide service to Hartsfield-Jackson International Airport. An East Point location would provide connections to the airport via MARTA's East Point station. An Aviation Boulevard location would be co-located with a planned multi-modal terminal with shuttle connections to the airport.

¹ Georgia Rail Consultants, *Macon-Charlotte Southeast High Speed Rail Corridor Plan*, Georgia Department of Transportation, South Carolina Department of Transportation, North Carolina Department of Transportation, Federal Railroad Administration, May 2004.

An additional set of scenarios will be considered which include stations at the Charlotte airport and in the northern suburbs (Atlanta Metro North). The report *Transportation Planning for the Richmond-Charlotte Railroad Corridor*² has specified locations for a new station in downtown Charlotte and a station serving the Charlotte airport.

2.5 Other Considerations

The demand for rail travel in the Charlotte to Macon corridor depends on an additional consideration that has to do with the interface with rail service north of Charlotte. In 1992, the United States Department of Transportation (USDOT) designated several high-speed corridors nationwide - including the Southeast Corridor from Washington, D.C. to Richmond, Raleigh, and Charlotte. In October 2002, North Carolina, Virginia, the Federal FHWA and FRA completed the vital first part of a two-part environmental study for the Washington, DC to Charlotte portion of the Southeast High Speed Rail Corridor (SEHSR). The study results from the Tier I Environmental Impact Study identified the preferred route and the overall project purpose and need. The Tier II study is expected to provide a detailed analysis on the impacts, including track location, station arrangement and detailed design. The project plans for the Southeast High Speed Rail Project proposes a fossil fuel locomotive with a top operating speed of 110 mph, with completion of the Tier II Environmental Impact Study by 2011, and construction anticipated in the 2015-2020 time frame.

For this study, we propose two possible cases. In terms of potential passenger demand generation, the least favorable case involves the situation where there will be no significant rail improvements between Charlotte and Washington DC, and that travelers with trip origins (destinations) in the Charlotte to Macon corridor will be required to transfer to existing Amtrak services for all destinations (origins) north of Charlotte. Existing Amtrak services consist of the Piedmont (1 round trip/day, Raleigh to Charlotte), the Carolinian (1 round trip/day, New York to Charlotte) and the Crescent (1 round trip/day, New York to New Orleans). The current average travel time from Charlotte to Washington DC on Amtrak is approximately 9.5 hours. The minimum transfer time will be assumed to be ½ hour, but because there are very few daily Amtrak frequencies, transfer times could be much longer.

The much more favorable case assumes connecting rail services envisioned in the Southeast High-Speed Rail studies are in place allowing higher speed travel from Charlotte to Washington and beyond. The Record of Decision for the Tier I Southeast High Speed Rail Project³ was based on ridership estimates that assumed a 110 mph maximum speed, and 4 round trips/day, Charlotte to Washington, and an additional 4

² Parsons Transportation Group, *Technical Monograph: Transportation Planning for the Richmond-Charlotte Railroad Corridor*, Federal Railroad Administration, January 2004.

³ *The Record of Decision for the Tier I Southeast High Speed Rail Project*. Federal Railroad Administration, Federal Highway Administration, November 20, 2002.

round trips/day, Charlotte to Raleigh. The estimated end-to-end travel times for the improved rail alternatives studied range from 6 hours to 7.5 hours, which constitutes a 20 percent to 35 percent improvement over existing Amtrak service. This is in general agreement with the assumptions used in other studies of IISR in the Charlotte-Washington corridor⁴. In our most favorable case analysis of services north of Charlotte, we will assume the speed and frequency assumptions used in the Record of Decision, and incorporate through-train service connecting to Washington DC and, possibly, to some Northeast Corridor train destinations.

2.6 Scenario Definition

Thus each scenario defined by a technology/alignment assumption will be analyzed based on variations in the number of stations and the connecting rail services north of Charlotte.

The cases considered are as follows:

- 1 – All stations - Charlotte, NC, Charlotte International Airport, Gastonia, NC, Spartanburg, SC, Greenville-Spartanburg International Airport (GSP), Greenville, SC, Clemson, SC, Toccoa, GA, Gainesville, GA, North Atlanta Metro, MMPT Atlanta, Atlanta International Airport, Griffin, GA and Macon, GA
- 2 – All stations except GSP
- 3a – All stations except GSP, Toccoa and Griffin
- 3b – All stations except GSP, Toccoa and Griffin with Griffin bypass
- 4 – All stations except GSP, Toccoa, Atlanta North and Griffin
- 5 – All stations except Charlotte International Airport, GSP, Toccoa, Atlanta North, Griffin, and Atlanta International Airport
- 6 – Express option with stops at Charlotte, NC, Charlotte International Airport, GSP, Gainesville, GA, MMPT Atlanta, and Macon, GA

The primary determinant in initial corridor location is the station stops. The table below lays out the seven station stop scenarios. Case 1 includes all stops and takes the preferred Decatur Route, along an abandoned Norfolk Southern (NS) route. The alternative is to follow the CSX freight alignment into the MMPT. This would require backing out of the

⁴KPMG Peat Marwick LLP, Parsons Brinckerhoff Quade & Douglas, Inc., and Daniel Consultants, *Southeast High Speed Rail Market and Demand Study, Final Report*, North Carolina Department of Transportation, Virginia Department of Rail and Public Transportation, South Carolina Department of Transportation, Georgia Department of Transportation, Florida Department of Transportation, Federal Railroad Administration, August 1997.

Parsons Transportation Group, *Technical Monograph: Transportation Planning for the Richmond-Charlotte Railroad Corridor*, Federal Railroad Administration, January 2004.

Potential Improvements to the Washington-Richmond Railroad Corridor, National Railroad Passenger Corporation, May 1999.

MMPT through a "Y" interchange to return to its southern travel Case 3(a) and 3(b) are identical except that 3(a) proceeds through Griffin, Georgia, as in cases 1, and 2 Case 3(b) uses a new right-of-way corridor roughly tracking I-75 which avoids Griffin altogether The I-75 option is used for all the other cases as shorter and less disruptive than roughly tracking the NS, primarily single track alignment, between Atlanta and Macon

The technology considered will include

90 and 110 mph diesel option roughly follows existing freight railroad alignment with new single or double concrete tie track Single track shares cross-overs with and trackage with the freight railroad, some high speed sidings, and the closing of most grade crossings

125 mph diesel option minimize track sharing with freight railroad, very few grade crossings allowed, significant new ROW required

150 mph diesel option no track sharing with freight except where speeds drop below 125 mph near stations, no grade crossings, mostly new ROW, all new double concrete ties track

150 mph electric option same as above except additional ROW required for electrification – poles to hang catenaries, substations and fencing

200 mph electric only Route as close to straight line between stations as possible, extra ROW for electrification necessary, no track sharing except where speeds drop below 125 mph entering and departing stations

A more thorough explanation and description of the technology appears in Appendix G

Table 2-1 Station Stop Options¹

Station	Mileage	Case 1	Case 2	Case 3 (a)	Case 3 (b)	Case 4	Case 5	Case 6
Charlotte, NC	0	Stop	Stop	Stop	Stop	Stop	Stop	Stop
Charlotte Airport, NC	7	Stop	Stop	Stop	Stop	Stop		Stop
Gastonia, NC	22	Stop	Stop	Stop	Stop	Stop	Stop	
Spartanburg, SC	77	Stop	Stop	Stop	Stop	Stop	Stop	
Spart/Green Airport, SC	95	Stop						Stop
Greenville, SC	108	Stop	Stop	Stop	Stop	Stop	Stop	
Clemson, SC	138	Stop	Stop	Stop	Stop	Stop	Stop	
Toccoa, GA	171	Stop	Stop					
Gainesville, GA	209	Stop	Stop	Stop	Stop	Stop	Stop	Stop
Atlanta North, GA	256	Stop	Stop	Stop	Stop		Stop	
Atlanta, GA	262	Stop	Stop	Stop	Stop	Stop	Stop	Stop
Atlanta Airport, GA	272	Stop	Stop	Stop	Stop	Stop		Stop
Griffin, GA	305	Stop	Stop		I-75			
Macon, GA	365	Stop	Stop	Stop	Stop	Stop	Stop	Stop

1-Stations are identified with "Stop" where stops are proposed, and arrows indicate the station is not included for that case

The railed vehicle technology selected for study on the Macon-Atlanta-Greenville-Charlotte rail corridor encompasses operations with operating speeds of 90, 110, 125, 150, and 200 mph. For each scenario, an analysis of each running technology trip time performance (train performance calculation - TPC) and overall system operation provides estimates for optimal running times, intended schedules and expected performance for all services.

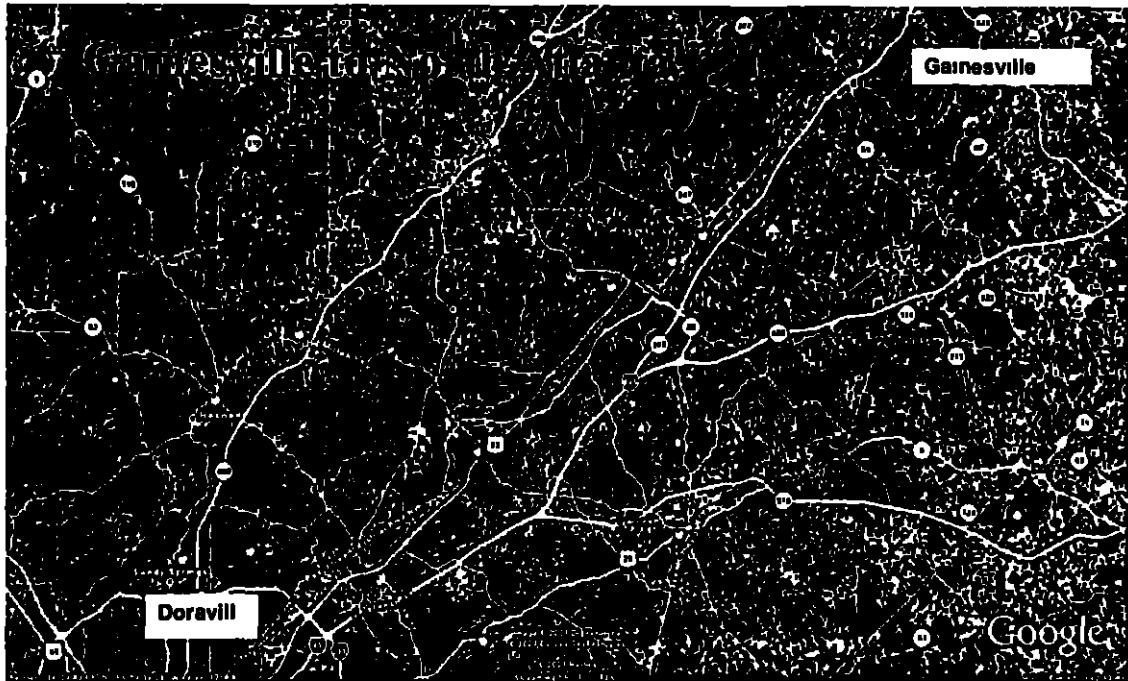
The trainset configurations are defined to evaluate different technology options with maximum operating speeds ranging from 90-200 mph. The existing track configuration is derived from freight railroad track charts, and modified routes are developed for each case studied. With this input, the TPC derives the general motion of a passenger consist from a simplified yet verifiable calculation using Newtonian laws of motion, train resistance, and motive propulsion power. Volpe is using a TPC originally developed by the University of Illinois in the mid-1970's, and more recently extensively modified by Volpe to specifically evaluate passenger rail service. The program has been validated, calibrated, and utilized in research by the Federal Railroad Administration Office of Research and Development.

The table below shows one-way trip times for various technology and station stop combinations.

Table 2-2 Summary One-Way Trip Times Including Pad/Dwell

	Case 1	Case 2	Case 3 (a)	Case 3 (b)	Case 4	Case 5	Case 6
Charlotte to Atlanta							
90 mph	3 51	3 48	3 44	3 44	3 41	3 40	3 31
110 mph	3 43	3 39	3 36	3 36	3 32	3 34	3 25
125 mph	2 55	2 50	2 46	2 46	2 43	2 43	2 31
150 mph	2 36	2 29	2 26	2 26	2 22	2 22	2 09
200 mph	2 22	2 13	2 08	2 08	2 03	2 04	1 46
Charlotte to Macon							
90 mph	5 29	5 26	5 20	5 00	5 17	5 14	5 07
110 mph	5 21	5 17	5 11	4 43	5 06	5 06	4 58
125 mph	4 05	4 00	3 51	3 45	3 47	3 44	3 36
150 mph	3 36	3 31	3 23	3 17	3 18	3 15	3 06
200 mph	3 16	3 07	2 57	2 51	2 51	2 48	2 35

Figure 4-9 High-Speed Alignment between Gainesville, Georgia and Doraville, Georgia



4.3.5 Atlanta Alternatives

There are two alternatives for approaching the major Atlanta high-speed station, *i.e.* the multi-modal passenger terminal (MMPT). One employs existing NS ROW, the "Decatur Belt", approaching the MMPT from the east. The alternative uses CSX track through the very busy wye between Simpson and Edgewood and enters the MMPT from the west. The two alternatives are depicted in Figures 10 and 11 below. The CSX track has heavy freight traffic and does not exit the MMPT to the east, but instead must "back" out, through the wye, before continuing south to rejoin NS ROW and continue to Macon. The preferred route is the longer eastern route along former NS ROW called the "Decatur Belt".

The Decatur Belt

The Decatur Belt Line (DBL) is the preferred alternative for several reasons. It is a continuous movement through the MMPT, without any maneuverings that could cause delays or potentially present safety problems. The corridor can be exclusively dedicated

to passenger traffic (up to the merge with CSX tracks after Dekalb Avenue) Although it will require new track, the ROW will allow two tracks and the existing structures, though aged) exist to cross almost all streets Only one potential grade crossing will be required

The DBL separates from the existing Amtrak route around Plasters Avenue Northeast, just north of I-85 and crosses the interstate heading southeast The ROW travels alongside the Ansley Golf Course and crosses under Piedmont Avenue (a four-lane, undivided major thoroughfare) The track disappears in some development adjoining Evelyn Street The DBL continues as a single track under Park Drive as well as under Monroe Drive and Virginia Avenue The track crosses over Ponce De Leon Avenue over a bridge that needs to be replaced Another bridge needing replacement crosses over Virginia Avenue Further along the DBL a two-track bridge crossing Ralph McGill Boulevard needs to be replaced The route then travels under the four-lane, divided Freedom Parkway and one of its ramps before continuing under Highland Avenue The underpass at Edgewood will need to be upgraded

A grade crossing of Lake Avenue will either need to be eliminated or otherwise protected, just north of the Edgewood underpass From Edgewood to Dekalb is approximately 680 feet Adjacent to Dekalb Avenue is the elevated MARTA transit structure traveling between the King Memorial Station and Inman Park The CSX tracks that the DBL needs to merge with to approach the MMPT are on the other side of the transit structures from Dekalb

A grade crossing at this location is possible, although it would disrupt traffic on Dekalb and may require some alterations to the MARTA structures The high-speed train should be traveling at less than 80 mph at this location, decelerating as it approaches the MMPT Raising Dekalb over the tracks would cut off some access to adjacent streets but could be done without impacting the underpasses beneath the tracks at Boulevard and Krog

Once on the CSX property an arrangement must be made with CSX to share track or fit another track into a very narrow ROW crossing I-75 Unless the freight railroad and the high-speed line share tracks, the bridges over Jesse Hill Drive and Piedmont Avenue will have to be reconstructed Even if track is shared, these overpasses may need rehabilitation The route goes underground at Courtland Street, passes under a parking garage and Central Avenue and Pryor before arriving at the MMPT Leaving the MMPT will not present as many interesting engineering concerns as approaching it

Turning the dilapidated brick building shown in Figure 12 into the multimodal hub envisioned will be a major cost For the Decatur Belt Alternative, additional cost will be required to expand the underground space at the left of Figure 12 to accommodate the passenger track

Figure 4-10 Alternative Routes through Atlanta

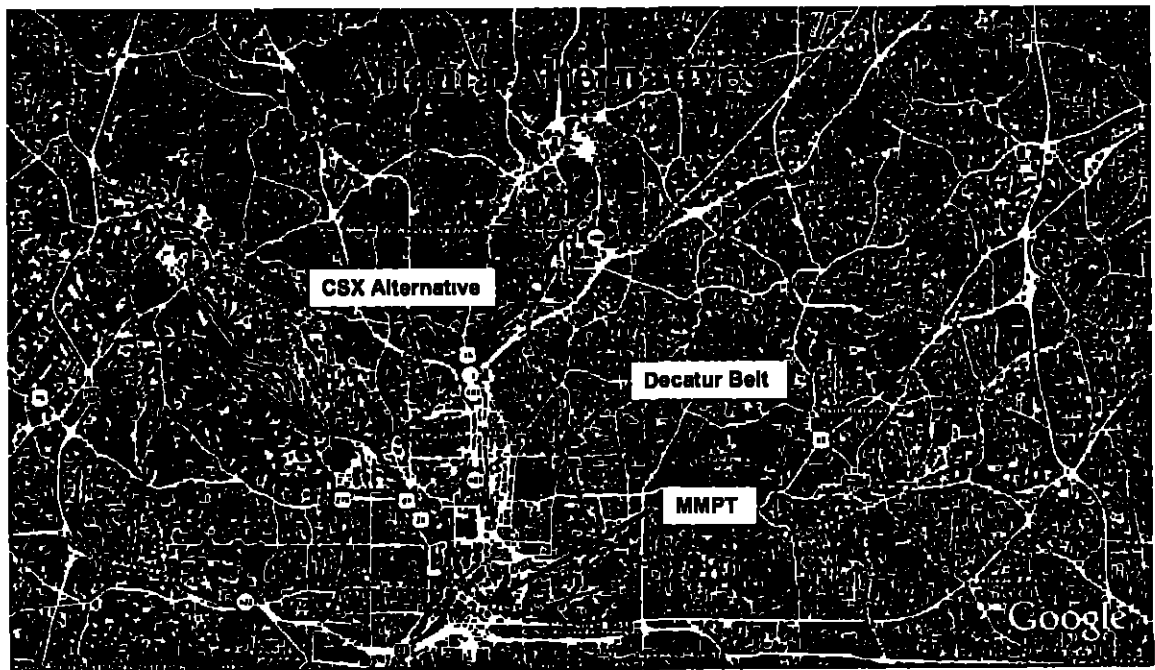


Figure 4-11 Approaching the MMPT





Figure 4-12 The Site of the Proposed MMPT Showing the existing NS and CSX Tracks on the Left and the MARTA Lines (In the Trenches) on the Right

The All CSX Alternative

The other potential route follows CSX active alignment to the west and, after entering "the wye", around Simpson Street Northwest, south into the MMPT. This route has no possibility of continuing south once it has entered the MMPT. The train must backup past Simpson Street before continuing south to join the same route used by the DBL to travel to the airport station. Although the maneuver only costs this route five minutes in extra time, the complexity of maneuver adds a potential for additional delays as well as safety problems. Amtrak may not accept this route which may make it no alternative at all. The route is only approximately ½ mile shorter than the DBL which at an average of 90 miles per hour is less than one minutes traveling time difference.

The CSX Alternative begins where the DBL splits off at Plasters Avenue Northwest. It continues southwest along I-85 on existing freight ROW. It turns southeast at the Foster

Street wye and continues on CSX ROW, turning more easterly at the Simpson Street wye. Although, generally, there appears to be sufficient space to accommodate two high-speed tracks, after Simpson Street, it may be necessary to use the freight track most of the way into the station. The foundry Street crossing probably will need to be eliminated.

4.3.6 Atlanta to Macon, Georgia

There are two proposed alternatives for the route from Atlanta to Macon. One approximately uses existing NS alignment through Griffin, Georgia, while the other bypasses Griffin altogether, breaks off from the NS south of the Atlanta airport and approximately follows I-75 to Macon. The blue route through Griffin is tortuous and substantially longer than the I-75 alternative. Using the alternative represents a 10 to 20 minute difference in trip time (at 200 and 90 mph, respectively) with no stop in Griffin in either case.

For the I-75 alternative, the highway ROW can be used in most places, and the median between the north and south lanes can also be used (particularly if employing a single track).

Figure 4-13 Two Alternative Routes between Atlanta and Macon, Georgia

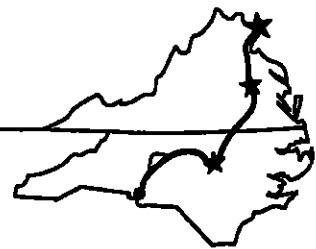


ATTACHMENT 4

SOUTHEAST HIGH SPEED RAIL

www.sehsr.org

c/o NC Department of Transportation
1553 Mail Service Center, Raleigh, NC 27699-1553
919-733-4713



Date Jan 8, 2009
Release No 14

MULTI-STATE PARTNERSHIP RELEASES STUDY ON HIGH SPEED RAIL OPTIONS *Study Finds High Speed Rail Feasible in Charlotte-Macon Corridor*

RALEIGH, N.C. — Transportation officials from Georgia, South Carolina and North Carolina have released a feasibility study that assesses the implementation of high speed passenger train service south between Charlotte, N C , Greenville, S C , Atlanta, Ga and Macon, Ga as an extension of the Washington, D C to Charlotte Southeast High Speed Rail corridor (SEHSR)

The United States Congress authorized a program of national high speed rail corridors in 1991 The SEHSR in Virginia and North Carolina was one of the five original corridors designated by the USDOT in 1992 In 1998, the USDOT extended the corridor into South Carolina, Georgia and Florida

The Charlotte-Macon Southeast High Speed Rail Corridor study assesses the capacity and speed capabilities of the corridor and estimates possible ridership, revenue, operating and capital costs associated with extending high-speed passenger rail from Charlotte, N C to Macon, Ga , along the I-85 corridor The report also addresses the feasibility of train speeds up to 150 miles per hour, including new track construction in locations that would increase speeds and avoid congested areas The study was conducted by the Volpe National Transportation Systems Center in Cambridge, Mass

"This effort supports our shared belief that we must seriously consider -- and plan for -- transportation alternatives in these rapidly developing areas," said Georgia Transportation Commissioner Gena Evans "Given the growth our states continue to experience, we must explore every tool in our tool box in order to move the needle on transportation reform "

South Carolina Transportation Secretary H B "Buck" Limehouse, Jr noted "This Southeast corridor is recognized as one of the top mega-regions of the nation We absolutely must be planning ways to connect it with our neighbors to the northeast in energy-responsible ways This analysis helps to better position ourselves for high speed rail should sufficient funding be appropriated "

The Charlotte-Macon corridor study marks the next phase in the overall development of high-speed rail in the Southeast The North Carolina Department of Transportation and Virginia Department of Rail and Public Transportation began initial environmental work in the mid-1990s on the Washington-Charlotte portion of SEHSR

"We've been working with Virginia on the SEHSR corridor for over a decade now and are pleased to see this initiative progress further," said North Carolina Transportation Secretary Lyndo Tippet
"We look forward to our continued partnership with Georgia and South Carolina to link these important centers of economic activity "

The study builds upon a prior study in 2004 which assessed the feasibility of high speed rail service in this corridor at three relatively "lower" speeds 79 mph, 90 mph, and 110 mph. It proposed using existing rail tracks for the most part with some modifications.

Both studies concluded that high speed rail passenger service in this corridor is feasible. State transportation officials from all three states agree the completed study lays the groundwork for more detailed analyses.

- ◆ **New travel surveys that would obtain actual origin and destination data from travelers in the corridor.**
- ◆ **Second, more thorough ridership/revenue projections using the travel data and extending the model to the major markets in the north, including Washington DC, New York and Boston.**
- ◆ **Finally, the two preceding efforts would feed into a Tier I Environmental Impact Study (EIS), which would begin the Federally-mandated EIS process conducted for a potential transportation infrastructure investment of this type. The Tier I EIS is a National Environmental Protection Act (NEPA) document that establishes the overall project purpose, approach and corridor location and size.**

High speed rail service, where appropriate, will provide business and leisure travelers with a competitive alternative to air and auto for trips between 100 and 500 miles.

Virginia, North Carolina, South Carolina and Georgia are working together with the business communities in each state to plan, develop and implement high speed rail in the Southeast. If implemented, the system would be developed incrementally, upgrading existing rail rights of way where possible. The complete Volpe Study can be viewed online at www.sehsr.org.

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ATTACHMENT 5

